

1. Marketing and Buyer/Tenant Selection

The developer shall devise a fair and reasonable plan for marketing of units and tenant or buyer selection. In general, tenant or buyer selection should be conducted by means of a lottery. The developer may contract with an experienced entity to conduct the marketing of units and the lottery. Before the lottery process commences, the developer must submit a lottery and marketing plan for approval by the Project Administrator. The Project Administrator will review the plan to ensure that the following matters are covered:

- Sales prices or rents of the affordable units (See Sections 15 and 16)
- Maximum income and asset eligibility of households applying for the affordable units (See Section 14)
- Marketing and outreach plan to ensure affirmative marketing will be undertaken
- Use restrictions to be used to ensure continued affordability of ownership units (See Section 13)
- Sample advertisements to be used and listing of where ads will be placed

2. Setting Up the Lottery

Whenever possible the lottery should be collaboration between the municipality and the project developer supervised by the Project Administrator. In most cases, the developer, Project Administrator or an experienced entity approved by the Project Administrator will administer the lottery process (including the marketing and buyer or tenant selection), but the municipality shall have an active involvement if there will be a local preference. The developer shall pay for the costs of administering the lottery.

It is recommended that the municipality review the marketing and lottery plans and communicate any concerns to the Project Administrator prior to its final approval. In addition, the Zoning Board of Appeals (ZBA) in its Comprehensive Permit** decision may choose to address such issues as who will be conducting the lottery, any local entity which must approve the lottery plan, what kinds of local preference, if any, will be given, and required outreach. (**may be applicable to Planning Board site review in LIP Units Only scenario)

3. When to Conduct the Lottery

The lottery should be conducted after the expiration of all appeals of the Comprehensive Permit and other required permits or approvals not covered by the Comprehensive Permit.

For ownership units, activities leading up to the lottery activities should be scheduled to begin approximately 6 months prior to the anticipated date of occupancy of the first affordable unit. Time is needed for activities such as outreach, advertising, conducting general workshops, and the mortgage application process.

Preference Categories

Municipalities may specify that there be a local preference for up to 70% of the affordable units. The Zoning Board of Appeals in consultation with the local housing partnership or housing committee, the local housing authority, or other town boards should determine the types of local preference. The ZBA may delegate the determination of local preference to these other local agencies, especially the local housing partnership.

Typical local preference categories include:

(The following categories are equal in priority)

1. Current residents

- A household in which one or more members is living in the city or town at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.

2. Family of Current Residents

- Close relatives, including children or parents, of a current resident of the city or town.

3. Municipal/School Department Employees

- Employees of the municipality, such as teachers, firefighters, police officers, librarians, or town hall employees.

4. Employees of Local Businesses

- Employees of businesses located in the municipality.

The developer and the municipality may negotiate other preference categories or variations of the above categories. However, to ensure that these preferences do not violate applicable fair housing laws, the following procedure should be followed:

A lottery for projects including a local preference should have two applicant pools: a local preference pool and an open pool. After the application deadline has passed, the municipality should determine the number of local resident minority households in the applicable HUD region and the percentage of minority applicants in the local preference pool. If the percentage of minorities in local resident households and in the local

preference pool is less than the percentage of minorities in the surrounding HUD-defined area, the municipality should make the following adjustments to the local preference pool:

The municipality should hold a preliminary lottery comprised of all minority applicants who did not qualify for the local preference pool, and rank the applicants in order of drawing. Minority applicants should then be added to the local preference pool in order of their rankings until the percentage of minority applicants in the local preference pool is equal to the percentage of minorities in the surrounding HUD-defined area. Applicants should be entered into all pools for which they qualify. For example, a local resident should be included in both pools.

Minorities should be identified in accordance with the regulatory classifications established by HUD, which are: Native American or Alaskan Native; Asian or Pacific Islander; African-American; Hispanic/Latino; or Cape Verdean.

If the project includes units accessible or adaptable for occupancy by physically disabled persons in conformity with requirements of G.L. c.22 §13A and the Architectural Access Board, preference for those units shall be given to such physically disabled persons.

4. Steps in the Lottery Process

Step 1: Determining Basic Qualifications

The following standards should generally be used for lottery qualification:

- a) Total household gross income shall not exceed 80% of the area median income, based on household size, as defined by the US Department of Housing and Urban Development (HUD). Annual income shall be determined in the manner set forth in 24 C.F.R. 5.609 (or any successor regulations). Income limits shall be adjusted annually to reflect the HUD figures in effect at the time. A "household" is two or more persons who will live regularly in the unit as their primary residence and who are related by blood, marriage, law, or who have otherwise evidenced a stable inter-dependent relationship, or an individual.
- b) The household shall not have owned a home within three years preceding the application, with the exception of displaced homemakers and elderly households (where at least one household member is 55 or over).
- c) The household shall have sufficient funds for a down payment and closing costs, as determined by the developer and the participating lender.
- d) Household size shall be appropriate for the number of bedrooms in the dwelling unit. It is necessary to set a minimum and maximum household size for the units. For example, a minimum household size of 2 persons is necessary for two

bedroom units, and three and four bedroom homes need larger households. Maximum household size may be set in accordance with the State Sanitary Code or applicable local by laws.

- e) Household income shall be sufficient to support at least 50% of the price of the home. No more than 50% of the purchase price shall be cash.
- f) Household assets shall be defined in the manner by which HUD determines assets for the purposes of attribution of income. (See 24 CFR 5.609).
- g) Non-household members shall not be permitted as co-signers of the mortgage.
- h) Individuals who have a financial interest in the development and their families shall not be eligible to participate in the lottery.

Step 2: Materials for Applicants

The developer shall prepare complete application materials, including an application form, application certification form, authorization for consent to release information, description of the use restriction, a description of the eligibility requirements, and a clear description of the preference system being used and how the lottery winners will be chosen. The materials shall be approved by the Project Administrator prior to their use.

Step 3: Advertising and Outreach

Affirmative fair marketing of all the affordable units shall be conducted to provide maximum opportunity for low and moderate-income households, including minority households, to apply for the lottery. Typically, ads will be placed in local and regional newspapers, Boston area newspapers, and newspapers serving minority communities. Notices should be sent to local fair housing commissions, area churches, local and regional housing agencies, local housing authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.

If the municipality is assisting in the administration of the lottery, the municipality should offer one or more “workshops” for members of the public to educate them about the lottery process. These workshops may include local officials, lottery administrators, developers, and local bank or finance officials. The date, time, and location of these workshops should be published in ads or flyers that publicize the availability of lottery applications. The workshops are usually held in a municipal building, school, library, or public meeting room. Workshops are usually held in the evening or on weekend days in order to reach as many potential applicants as possible. Attendance at a workshop should not be a precondition of the approval of a lottery application.

The purpose of the workshop is to answer questions that are commonly asked by lottery applicants. Usually a municipal official will welcome the participants and describe the municipality’s role in the affordable housing project. The lottery administrator will then explain the information requested on the application and answer questions about the lottery drawing process. The developer should be present to describe the development

and to answer specific questions about the affordable units. It is helpful to have a local banker or financial representative present to answer questions about the qualifications for purchasing and financing of affordable units. The number of workshops needed is usually determined by the level of interest about the development.

Complete application materials shall be readily available to potential lottery applicants.

Sales prices must be “locked-in” at the time of the initial marketing of the affordable homeownership units. Thereafter, the prices of the homes should not be increased for lottery winners, even if interest rates and HUD income guidelines change.

Step 4: Documentation

Applicants for the lottery should be required to submit all of the required materials by a specified deadline. The application period should be at least 60 days. The level of documentation required from the applicant may vary. Some lotteries allow an applicant to “self-qualify” based on reliable information submitted at the workshops. Other lotteries require that applicants obtain a “pre-qualification” letter from a lender and submit verified documentation (e.g. income tax returns) to be eligible for the lottery. Whatever method is chosen, only applicants who are income and asset eligible and who submit all required information should be entered into the lottery.

Step 5: Lottery Selection

Once all required information has been received, each qualified applicant should be assigned a registration number. Ballots with the registration number for applicant households are placed in each and all lottery pools in which they qualify. The ballots are randomly drawn for both of the pools and placed in the order drawn (an applicant in more than one pool would likely have a different rank in each pool.) If a project has units with different numbers of bedrooms, the various unit types should be distributed proportionately between the two lottery pools. Units are then awarded (largest units first) by proceeding down the list of lottery winners to the first household on the list which is of appropriate size for the largest unit available according to the appropriate-unit-size criteria established for the lottery. Once all larger units have been assigned to appropriately sized households in this manner, the selection order returns to the top of the list and selects appropriately sized households for smaller units. This process continues until all available units have been assigned to appropriately sized applicant households. Remaining unselected households will be selected in the same manner should alternate buyers be needed. If the local preference pool requires adjustment as described in Section 23, the preliminary lottery should be conducted before the final lottery is conducted.

Step 6: Loan Application

Once the lottery has been completed, applicants selected to purchase units will be given a reasonable pre-specified time period in which they must secure financing. It is helpful to invite the lottery winners to a loan application workshop often held at a lender’s office. It is helpful for a developer to make prior arrangements with local financial institution[s] with respect to financing qualified purchasers. Often such an

institution is prepared to make a preliminary approval of a loan. Once it makes such a preliminary approval of a loan, the applicant will then contact the developer and enter into a Purchase and Sale Agreement. The executed Purchase and Sale Agreement will then be submitted to the lender that will issue a firm financing commitment.

Step 7: Final Qualification and Closing

Once a Purchase and Sale Agreement has been signed, the developer or lender should submit income and asset documentation of the applicant to the Project Administrator. Income verification should include verified tax returns from the past year, a recent pay stub and reliable documentation as to other sources of income and assets. The Project Administrator will then verify that the household's income does not exceed 80% of the area median income. It shall also verify that household assets do not exceed the maximum allowable.

After closing on the sale of a unit, the developer should provide the Project Administrator or designee with a copy of the deed and use restriction and evidence of recording.